

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85691127
LAW OFFICE ASSIGNED	LAW OFFICE 103
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/85691127/large
LITERAL ELEMENT	AVE
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
ARGUMENT(S)	
<p>Having noticed its appeal of the July 1, 2016 Office Action, Applicant requests reconsideration by the Examining Attorney based the verified substitute specimen being filed herewith and the arguments set forth below.</p> <p>I. <u>Verified Substitute Specimen</u></p> <p>Applicant is submitting a verified substitute specimen comprising the display materials submitted as its initial specimen, the previously-submitted declaration of Mr. Eduardo Cortez under 37 C.F.R. § 2.20 (“Cortez I”), an additional photograph showing the nature of applicant’s point-of-sale use of its display materials, and a supplemental declaration by Mr. Cortez under 37 C.F. R. § 2.20 (“Cortez II”). This verified substitute specimen evidences and confirms that Applicant used the applied-for mark in commerce before the March 7, 2016, deadline for filing a statement of use. Applicant accordingly requests that its specimen be accepted, the office action withdrawn, and its application be approved for registration.</p> <p>II. <u>Applicant’s Specimens Qualify As A Display Associated With Its Goods</u></p> <p>Under Trademark Rule 2.56, “[a] trademark specimen is a label, tag, or container for the goods, or a display associated with the goods.” 37 C.F.R. 2.56(b)(1). <i>See also</i> 15 U.S.C. § 1127 (defining “use in commerce” as including placing mark on “display associated” with goods). “Section 45 of the Trademark Act does not define the term ‘displays associated therewith,’ and ... the Board must make a case-by-case determination of whether a particular use asserted to be a ‘display’ is adequate to demonstrate use in commerce.” <i>In re Shipley Co. Inc.</i>, 230 USPQ 691, 692 (TTAB 1986). Whether a display qualifies as a specimen depends on whether it has a “point of sale nature” and if it was “designed to catch the attention of purchasers as an inducement to consummate a sale.” <i>In re U.S. Tsubaki, Inc.</i>, 109 USPQ2d 2002, 2003 (TTAB 2014) (quoting <i>In re Sones</i>, 93 USPQ2d at 1122, and <i>In re Shipley Co.</i>, 230 USPQ 691, 694 (TTAB 1986)). Thus, a photograph showing display materials featuring a mark in a setting where a purchaser has the opportunity to purchase the identified goods can be sufficient. <i>See In re Shipley Co., Inc.</i>, 230 USPQ 691 (TTAB 1986). A declaration attesting to the nature in which a specimen was used likewise can suffice. <i>See In re Unigene Labs, Inc.</i>, 2008 WL 4674579, at *4 (TTAB Sept. 30, 2008) (affirming refusal in absence of “a</p>	

declaration by someone with personal knowledge attesting to the nature in which the specimen was used”).

Applicant respectfully submits that its display materials, as shown in its initial specimen as supported by Mr. Cortez’s initial declaration and in its verified substitute specimen as supported by Mr. Cortez’s supplemental declaration, are sufficient specimens because they have a “point of sale nature” and were “designed to catch the attention of purchasers as an inducement to consummate a sale.”

The July 1, 2016, Office Action rejects Applicant’s previously-submitted specimen and declaration by Mr. Cortez because “there is no other evidence of point-of-sale presentation.” However, “a declaration by someone with personal knowledge attesting to the nature in which the specimen was used” can satisfy that requirement. *See In re Unigene Labs, Inc.*, 2008 WL 4674579, at *4 (TTAB Sept. 30, 2008). Here, Mr. Cortez’s initial declaration establishes of point-of-sale presentation by identifying a specific date on which Applicant’s display materials were presented (*i.e.*, March 19, 2015), the person to whom Applicant presented them (*i.e.*, Mr. Patrick Coyne, Assistant Director of Food and Beverage for The Palmer House Hilton), the reason for their presentation (*i.e.*, an offer for sale), and the relationship between the display materials and Applicant’s goods (*i.e.*, concurrent with providing samples). (Cortez I at ¶ 3.) Moreover, Mr. Coyne’s letter of intent attached to and authenticated by Mr. Cortez’s declaration corroborates that he received and considered Applicant’s display materials as an inducement to purchase its goods. (*See id.* at ¶ 4 & Exh. B.) Mr. Cortez’s initial declaration therefore sufficiently evidences that Applicant’s display materials had a “point of sale nature” and were “designed to catch the attention of purchasers as an inducement to consummate a sale” to qualify them as a proper specimen.

The additional photograph included with Applicant’s verified substitute specimen further shows, and Mr. Cortez’s declaration describes in detail, the nature of Applicant’s point-of-sale use of its display materials in connection with its offers to The Palmer House and, additionally, Mercadito Hospitality in March 2015. Mr. Cortez testifies that Applicant presented its display materials on a table in close proximity to its goods as shown in Exhibit B to his declaration in offering its goods for sale, that Applicant provided its display materials to prospective buyers concurrent with samples of its goods, and that it discussed the branding for its goods, including the applied-for mark as shown on its display materials, as potential buyers were sampling its goods. (Cortez II at ¶¶ 6-7.) Mr. Cortez’s second declaration additionally authenticates The Palmer House’s letter of intent to purchase Applicant’s goods, which it issued “[a]fter tasting the Ave Tequila samples on March 19, 2015 and fully reviewing the Ave Tequila brand design (*i.e.* label, logo, and font).” (*Id.* at ¶ 8, Exh. C.) Therefore, Applicant’s initial specimen and its verified substitute specimen both show the applied-for mark in use in commerce such that registration should be approved under 15 U.S.C. § 1051(d)(1). *See In re Shipley Co., Inc.*, 230 USPQ at 693; *In re Unigene Labs*, 2008 WL 4674579, at *4.

III. Applicant’s Specimens Qualify As A Document Associated With Its Goods

To the extent the Examining Attorney maintains that Applicant’s specimens do not qualify as display materials, Applicant’s specimens alternatively should be accepted as “documents associated with [Applicant’s] goods or their sale” because Mr. Cortez’s second declaration establishes that it was impracticable for Applicant to affix its marks to the its goods or their packaging. *See* 15 U.S.C. § 1127 (defining “use in commerce” as including placing mark “on documents associated with the goods or their sale” where placement of mark on goods or their containers, displays or tags is impracticable”); *see also* 37 C.F.R. § 2.56(b)(1) (USPTO may accept other documents related to goods if placement of mark on goods or packaging is impracticable); TMEP § 904.03(k) (same).

At the time of Applicant’s identified offers, its labeling had not yet been approved by the U.S. Department of Treasury’s Tobacco & Alcohol Tax & Trade Bureau. (Cortez II at ¶ 5.) As such, Applicant was prohibited by law from actually affixing its applied-for mark to the bottle containing its goods at that time. *See* 27 U.S.C. § 205(e) (requiring all labeling of distilled spirits introduced in interstate commerce to be in conformity with Treasury regulations). Instead, Applicant associated the applied-for mark with its goods by using it in commerce “on

documents associated with the goods or their sale,” placing such documents bearing the applied-for mark in close proximity to its goods, providing them to potential buyers with samples of its goods, and discussing the applied-for mark as shown on those documents with potential buyers as they sampled Applicant’s goods. (Cortez II at ¶¶ 5-7.)

Accordingly, even if the Examining Attorney were to conclude that Applicant’s specimens do not qualify as a “display associated with the goods,” it nonetheless should approve Applicant’s mark for registration because Mr. Cortez’s declaration establishes the impracticability of affixing the applied-for mark to Applicant’s goods and that Applicant has used its mark “on documents associated with the goods or their sale.” Registration therefore should be allowed because Applicant’s verified substitute specimen satisfies the use-in-commerce requirement under 15 U.S.C. § 1051(d)(1) as either a “display” or, alternatively, as a “document associated with the goods or their sale.”

IV. Conclusion

Applicant respectfully submits that the foregoing request for reconsideration fully satisfies all outstanding requirements and resolves all outstanding refusals set forth in the July 1, 2016 Office Action and asks that its application be approved for registration.

GOODS AND/OR SERVICES SECTION (current)

INTERNATIONAL CLASS	033
DESCRIPTION	Distilled Spirits
FIRST USE ANYWHERE DATE	At least as early as 09/30/2015
FIRST USE IN COMMERCE DATE	At least as early as 09/30/2015
FILING BASIS	Section 1(b)

GOODS AND/OR SERVICES SECTION (proposed)

INTERNATIONAL CLASS	033
DESCRIPTION	Distilled Spirits
FIRST USE ANYWHERE DATE	At least as early as 09/30/2015
FIRST USE IN COMMERCE DATE	At least as early as 09/30/2015
STATEMENT TYPE	"The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application" [for an application based on Section 1(a), Use in Commerce] OR "The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use" [for an application based on Section 1(b) Intent-to-Use]. OR "The attached specimen is a true copy of the specimen that was originally submitted with the application, amendment to allege use, or statement of use" [for an illegible specimen].

SPECIMEN FILE NAME(S)

JPG FILE(S)	\\TICRS\EXPORT17\IMAGEOUT17\856\911\85691127\xml1\RFR0011.JPG
ORIGINAL PDF FILE	SPU0-2041694194-20160928170202744646_.Cortez_Declaration_6360127x7AB84_.pdf
CONVERTED PDF FILE(S) (9 pages)	\\TICRS\EXPORT17\IMAGEOUT17\856\911\85691127\xml1\RFR0002.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\856\911\85691127\xml1\RFR0003.JPG
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	\\TICRS\EXPORT17\IMAGEOUT17\856\911\85691127\xml1\RFR0010.JPG
ORIGINAL PDF FILE	SPU0-2041694194-20160928170202744646_.AVE_Declaration_-_Final_6184370x7AB84_.pdf
CONVERTED PDF FILE(S) (6 pages)	\\TICRS\EXPORT17\IMAGEOUT17\856\911\85691127\xml1\RFR0012.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\856\911\85691127\xml1\RFR0013.JPG
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	\\TICRS\EXPORT17\IMAGEOUT17\856\911\85691127\xml1\RFR0017.JPG
ORIGINAL PDF FILE	SPU0-2041694194-20160928170202744646_.AVE_Initial_Specimen_6364483x7AB84_.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT17\IMAGEOUT17\856\911\85691127\xml1\RFR0018.JPG
SPECIMEN DESCRIPTION	The submitted verified substitute specimen consists of the display materials submitted as its initial specimen, the previously-submitted declaration of Mr. Eduardo Cortez under 37 C.F.R. § 2.20, an additional photograph showing the nature of applicant's point-of-sale use of its display materials, and a supplemental declaration by Mr. Cortez under 37 C.F. R. § 2.20.
DELETED FILING BASIS	1(b)
SIGNATURE SECTION	
DECLARATION SIGNATURE	/David Movius/
SIGNATORY'S NAME	David Movius
SIGNATORY'S POSITION	Attorney of record, Ohio bar member
SIGNATORY'S PHONE NUMBER	216.348.5400
DATE SIGNED	09/28/2016
RESPONSE SIGNATURE	/David Movius/
SIGNATORY'S NAME	David Movius
SIGNATORY'S POSITION	Attorney of record, Ohio bar member
SIGNATORY'S PHONE NUMBER	216.348.5400
DATE SIGNED	09/28/2016
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Sep 28 17:19:20 EDT 2016
TEAS STAMP	USPTO/RFR-XXX.XX.XX.XXX-2 0160928171920239055-85691 127-5505be45186aa5bd1597c 50bdf2914fb48648b058e52eb ba8af988fa0d69eb543-N/A-N /A-20160928170202744646

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **85691127** AVE(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/85691127/large>) has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Having noticed its appeal of the July 1, 2016 Office Action, Applicant requests reconsideration by the Examining Attorney based the verified substitute specimen being filed herewith and the arguments set forth below.

I. Verified Substitute Specimen

Applicant is submitting a verified substitute specimen comprising the display materials submitted as its initial specimen, the previously-submitted declaration of Mr. Eduardo Cortez under 37 C.F.R. § 2.20 (“Cortez I”), an additional photograph showing the nature of applicant’s point-of-sale use of its display materials, and a supplemental declaration by Mr. Cortez under 37 C.F. R. § 2.20 (“Cortez II”). This verified substitute specimen evidences and confirms that Applicant used the applied-for mark in commerce before the March 7, 2016, deadline for filing a statement of use. Applicant accordingly requests that its specimen be accepted, the office action withdrawn, and its application be approved for registration.

II. Applicant’s Specimens Qualify As A Display Associated With Its Goods

Under Trademark Rule 2.56, “[a] trademark specimen is a label, tag, or container for the goods, or a display associated with the goods.” 37 C.F.R. 2.56(b)(1). *See also* 15 U.S.C. § 1127 (defining “use in commerce” as including placing mark on “display associated” with goods). “Section 45 of the Trademark Act does not define the term ‘displays associated therewith,’ and ... the Board must make a case-by-case determination of whether a particular use asserted to be a ‘display’ is adequate to demonstrate use in commerce.” *In re Shipley Co. Inc.*, 230 USPQ 691, 692 (TTAB 1986). Whether a display qualifies as a specimen depends on whether it has a “point of sale nature” and if it was “designed to catch the attention of purchasers as an inducement to consummate a sale.” *In re U.S. Tsubaki, Inc.*, 109 USPQ2d 2002, 2003 (TTAB 2014) (quoting *In re Sones*, 93 USPQ2d at 1122, and *In re Shipley Co.*, 230 USPQ 691, 694 (TTAB 1986)). Thus, a photograph showing display materials featuring a mark in a setting where a purchaser has the opportunity to purchase the identified goods can be sufficient. *See In re Shipley Co., Inc.*, 230 USPQ 691 (TTAB 1986). A declaration attesting to the nature in which a specimen was used likewise can suffice. *See In re Unigene Labs, Inc.*, 2008 WL 4674579, at *4 (TTAB Sept. 30, 2008) (affirming refusal in absence of “a declaration by someone with personal knowledge attesting to the nature in which the specimen was used”).

Applicant respectfully submits that its display materials, as shown in its initial specimen as supported by Mr. Cortez’s initial declaration and in its verified substitute specimen as supported by Mr. Cortez’s supplemental declaration, are sufficient specimens because they have a “point of sale nature” and were “designed to catch the attention of purchasers as an inducement to consummate a sale.”

The July 1, 2016, Office Action rejects Applicant’s previously-submitted specimen and declaration by Mr. Cortez because “there is no other evidence of point-of-sale presentation.” However, “a declaration by someone with personal knowledge attesting to the nature in which the specimen was used” can satisfy that requirement. *See In re Unigene Labs, Inc.*, 2008 WL 4674579, at *4 (TTAB Sept. 30, 2008).

Here, Mr. Cortez's initial declaration establishes of point-of-sale presentation by identifying a specific date on which Applicant's display materials were presented (*i.e.*, March 19, 2015), the person to whom Applicant presented them (*i.e.*, Mr. Patrick Coyne, Assistant Director of Food and Beverage for The Palmer House Hilton), the reason for their presentation (*i.e.*, an offer for sale), and the relationship between the display materials and Applicant's goods (*i.e.*, concurrent with providing samples). (Cortez I at ¶ 3.) Moreover, Mr. Coyne's letter of intent attached to and authenticated by Mr. Cortez's declaration corroborates that he received and considered Applicant's display materials as an inducement to purchase its goods. (*See id.* at ¶ 4 & Exh. B.) Mr. Cortez's initial declaration therefore sufficiently evidences that Applicant's display materials had a "point of sale nature" and were "designed to catch the attention of purchasers as an inducement to consummate a sale" to qualify them as a proper specimen.

The additional photograph included with Applicant's verified substitute specimen further shows, and Mr. Cortez's declaration describes in detail, the nature of Applicant's point-of-sale use of its display materials in connection with its offers to The Palmer House and, additionally, Mercadito Hospitality in March 2015. Mr. Cortez testifies that Applicant presented its display materials on a table in close proximity to its goods as shown in Exhibit B to his declaration in offering its goods for sale, that Applicant provided its display materials to prospective buyers concurrent with samples of its goods, and that it discussed the branding for its goods, including the applied-for mark as shown on its display materials, as potential buyers were sampling its goods. (Cortez II at ¶¶ 6-7.) Mr. Cortez's second declaration additionally authenticates The Palmer House's letter of intent to purchase Applicant's goods, which it issued "[a]fter tasting the Ave Tequila samples on March 19, 2015 and fully reviewing the Ave Tequila brand design (*i.e.* label, logo, and font)." (*Id.* at ¶ 8, Exh. C.) Therefore, Applicant's initial specimen and its verified substitute specimen both show the applied-for mark in use in commerce such that registration should be approved under 15 U.S.C. § 1051(d)(1). *See In re Shipley Co., Inc.*, 230 USPQ at 693; *In re Unigene Labs*, 2008 WL 4674579, at *4.

III. Applicant's Specimens Qualify As A Document Associated With Its Goods

To the extent the Examining Attorney maintains that Applicant's specimens do not qualify as display materials, Applicant's specimens alternatively should be accepted as "documents associated with [Applicant's] goods or their sale" because Mr. Cortez's second declaration establishes that it was impracticable for Applicant to affix its marks to the its goods or their packaging. *See* 15 U.S.C. § 1127 (defining "use in commerce" as including placing mark "on documents associated with the goods or their sale" where placement of mark on goods or their containers, displays or tags is impracticable"); *see also* 37 C.F.R. § 2.56(b)(1) (USPTO may accept other documents related to goods if placement of mark on goods or packaging is impracticable); TMEP § 904.03(k) (same).

At the time of Applicant's identified offers, its labeling had not yet been approved by the U.S. Department of Treasury's Tobacco & Alcohol Tax & Trade Bureau. (Cortez II at ¶ 5.) As such, Applicant was prohibited by law from actually affixing its applied-for mark to the bottle containing its goods at that time. *See* 27 U.S.C. § 205(e) (requiring all labeling of distilled spirits introduced in interstate commerce to be in conformity with Treasury regulations). Instead, Applicant associated the applied-for mark with its goods by using it in commerce "on documents associated with the goods or their sale," placing such documents bearing the applied-for mark in close proximity to its goods, providing them to potential buyers with samples of its goods, and discussing the applied-for mark as shown on those documents with potential buyers as they sampled Applicant's goods. (Cortez II at ¶¶ 5-7.)

Accordingly, even if the Examining Attorney were to conclude that Applicant's specimens do not qualify as a "display associated with the goods," it nonetheless should approve Applicant's mark for registration because Mr. Cortez's declaration establishes the impracticability of affixing the applied-for mark to Applicant's goods and that Applicant has used its mark "on documents associated with the goods or their sale." Registration therefore should be allowed because Applicant's verified substitute specimen satisfies the use-in-commerce requirement under 15

U.S.C. § 1051(d)(1) as either a “display” or, alternatively, as a “document associated with the goods or their sale.”.

IV. Conclusion

Applicant respectfully submits that the foregoing request for reconsideration fully satisfies all outstanding requirements and resolves all outstanding refusals set forth in the July 1, 2016 Office Action and asks that its application be approved for registration.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 033 for Distilled Spirits

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: *For a trademark or service mark application:* As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. ***For a collective trademark, collective service mark, or collective membership mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. ***For a certification mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

In International Class 033, the mark was first used at least as early as 09/30/2015 and first used in commerce at least as early as 09/30/2015 .

Proposed: Class 033 for Distilled Spirits

Deleted Filing Basis: 1(b)

In International Class 033, the mark was first used at least as early as 09/30/2015 . and first used in commerce at least as early as 09/30/2015 .

Applicant hereby submits one(or more) specimen(s) for Class 033 . The specimen(s) submitted consists of The submitted verified substitute specimen consists of the display materials submitted as its initial specimen, the previously-submitted declaration of Mr. Eduardo Cortez under 37 C.F.R. § 2.20, an additional photograph showing the nature of applicant's point-of-sale use of its display materials, and a supplemental declaration by Mr. Cortez under 37 C.F. R. § 2.20. .

"The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application" [for an application based on Section 1(a), Use in Commerce] **OR** **"The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use"** [for an application based on Section 1(b) Intent-to-Use]. **OR** **"The attached specimen is a true copy of the specimen that was originally submitted with the application, amendment to allege use, or statement of use"** [for an illegible specimen].

JPG file(s):

[Specimen File1](#)

Original PDF file:

[SPU0-2041694194-20160928170202744646 . Cortez Declaration 6360127x7AB84 .pdf](#)

Converted PDF file(s) (9 pages)

[Specimen File1](#)

[Specimen File2](#)

[Specimen File3](#)

[Specimen File4](#)

[Specimen File5](#)

[Specimen File6](#)

[Specimen File7](#)

[Specimen File8](#)

[Specimen File9](#)

Original PDF file:

[SPU0-2041694194-20160928170202744646 . AVE Declaration - Final 6184370x7AB84 .pdf](#)

Converted PDF file(s) (6 pages)

[Specimen File1](#)

[Specimen File2](#)

[Specimen File3](#)

[Specimen File4](#)

[Specimen File5](#)

[Specimen File6](#)

Original PDF file:

[SPU0-2041694194-20160928170202744646 . AVE Initial Specimen 6364483x7AB84 .pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

SIGNATURE(S)

Declaration Signature

DECLARATION: The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that, if the applicant submitted the application or allegation of use (AOU) unsigned, all statements in the application or AOU and this submission based on the signatory's own knowledge are true, and all statements in the application or AOU and this submission made on information and belief are believed to be true.

STATEMENTS FOR UNSIGNED SECTION 1(a) APPLICATION/AOU: If the applicant filed an unsigned application under 15 U.S.C. §1051(a) or AOU under 15 U.S.C. §1051(c), the signatory additionally believes that: the applicant is the owner of the mark sought to be registered; the mark is in use in commerce and was in use in commerce as of the filing date of the application or AOU on or in connection with the goods/services/collective membership organization in the application or AOU; the original specimen(s), if applicable, shows the mark in use in commerce as of the filing date of the application or AOU on or in connection with the goods/services/collective membership organization in the application or AOU; ***for a collective trademark, collective service mark, collective membership mark application, or certification mark application***, the applicant is exercising legitimate control over the use of the mark in commerce and was exercising legitimate control over the use of the mark in commerce as of the filing date of the application or AOU; ***for a certification mark application***, the applicant is not engaged in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant. **To the best of the signatory's knowledge and belief, no other persons, except, if applicable, authorized users, members, and/or concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services/collective membership organization of such other persons, to cause confusion or mistake, or to deceive.**

STATEMENTS FOR UNSIGNED SECTION 1(b)/SECTION 44 APPLICATION AND FOR SECTION 66(a)

COLLECTIVE/CERTIFICATION MARK APPLICATION: If the applicant filed an unsigned application under 15 U.S.C. §§ 1051(b), 1126(d), and/or 1126(e), or filed a collective/certification mark application under 15 U.S.C. §1141f(a), the signatory additionally believes that: ***for a trademark or service mark application***, the applicant is entitled to use the mark in commerce on or in connection with the goods/services specified in the application; the applicant has a bona fide intention to use the mark in commerce and had a bona fide intention to use the mark in commerce as of the application filing date; ***for a collective trademark, collective service mark, collective membership mark, or certification mark application***, the applicant has a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce and had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce as of the application filing date; the signatory is properly authorized to execute the declaration on behalf of the applicant; ***for a certification mark application***, the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant. **To the best of the signatory's knowledge and belief, no other persons, except, if applicable, authorized users, members, and/or concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services/collective membership organization of such other persons, to cause confusion or mistake, or to deceive.**

Signature: /David Movius/ Date: 09/28/2016

Signatory's Name: David Movius

Signatory's Position: Attorney of record, Ohio bar member

Signatory's Phone Number: 216.348.5400

Request for Reconsideration Signature

Signature: /David Movius/ Date: 09/28/2016

Signatory's Name: David Movius

Signatory's Position: Attorney of record, Ohio bar member

Signatory's Phone Number: 216.348.5400

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 85691127

Internet Transmission Date: Wed Sep 28 17:19:20 EDT 2016

TEAS Stamp: USPTO/RFR-XXX.XX.XX.XXX-2016092817192023

9055-85691127-5505be45186aa5bd1597c50bdf

2914fb48648b058e52ebba8af988fa0d69eb543-

N/A-N/A-20160928170202744646

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application	:	Ave Imports USA, LLC
Mark:	:	AVE
App. No.	:	85691127
Filing Date	:	July 20, 2012

DECLARATION UNDER 37 C.F.R. § 2.20

1. I am the President of applicant Ave Imports USA, LLC ("Applicant"), and I make this declaration based on my personal knowledge.

2. The originally-submitted specimen, a copy of which is attached hereto as Exhibit A, and Applicant's verified substitute specimen, a copy of which is attached hereto as Exhibit B, were in use in commerce prior to the expiration of the filing date for filing a Statement of Use.

3. The originally-submitted specimen consists of point of sale materials that were provided to prospective purchasers of the identified goods (*e.g.*, distilled spirits) concurrent with the provision of such goods and an offer to sell by applicant.

4. As set forth in my prior declaration, the originally specimen was used in commerce as point-of-sale materials in connection with a bona fide offer to sell Applicant's identified goods to The Palmer House Hilton in Chicago, IL, on March 19, 2015. Additionally, Applicant used its originally-submitted specimen in commerce as point-of-sale materials in connection with a bona fide offer to sell Applicant's identified

goods to Mercadito Hospitality in Chicago, IL, that same week.

5. At the time of Applicant's March 2015, offers to sell the identified goods to The Palmer House and Mercadito Hospitality, Applicant could not affix the AVE mark to the bottle containing such goods because its product labeling had not yet been approved by the U.S. Department of Treasury's Tobacco & Alcohol Tax & Trade Bureau. Applicant therefore provided its goods in an unmarked bottle with materials prominently displaying the AVE mark and Applicant's related branding and marks in close proximity to its goods as described below and depicted in the specimen attached as Exhibit B as an inducement for The Palmer House and Mercadito Hospitality to purchase Applicant's goods.

6. As part of each offer, Applicant provided copies of its display materials bearing AVE mark previously submitted as a specimen concurrent with providing samples of Applicant's goods. Applicant's display materials bearing the AVE mark also were displayed on the table where Applicant provided samples of its goods in close proximity to Applicant's goods as depicted in the specimen attached as Exhibit B.

7. In addition to discussing pricing and other commercial terms relating to the goods, Applicant and representatives of both The Palmer House and Mercadito Hospitality specifically discussed Applicant's branding for its goods, including the AVE mark, as the representatives were sampling the goods as part of Applicant's bona fide offers for sale.

8. Applicant's March 15, 2015, offer to The Palmer House led to The Palmer House issuing the previously-submitted letter of intent, in which Mr. Patrick Coyne, The Palmer House's Assistant Director of Food and Beverage states:

After tasting the Ave Tequila samples on March 19, 2015 and fully reviewing the Ave Tequila brand design (i.e. label, logo, and font), it is the intent of The Palmer House Hilton to purchase Ave Tequila Blanco at an estimated price of \$599.88 per case. This letter is not a formal purchase agreement.

We look forward to further discussions and the possibility of doing business with Ave Tequila.

A true and accurate copy of Mr. Coyne's letter is attached as Exhibit C.

9. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth above are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Date:

9/2/2016

By:



Name:

Eduardo Cortez

Exhibit A



Exhibit B



AVE

HAND CRAFTED TEQUILA

Ave Imports USA, LLC. All rights reserved

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Exhibit C

PALMERHOUSE
A HILTON HOTEL

March 16, 2016

Palmer House Hilton
17 E. Monroe Street
Chicago, IL 60603

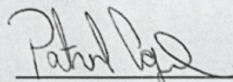
Ave Imports USA, LLC
7235 S. Ferdinand Avenue
Bridgeview, IL 60455

RE: Letter of Intent to Purchase Avé Tequila Brands

After tasting the Avé Tequila samples on March 19, 2015 and fully reviewing the Avé Tequila brand design (i.e. label, logo, and font), it is the intent of The Palmer House Hilton to purchase Avé Tequila Blanco at an estimated price of \$599.88 per case. This letter is not an official purchase and further details will be negotiated and executed through a formal purchase agreement.

We look forward to further discussions and the possibility of doing business with Ave Tequila.

The Palmer House Hilton



Patrick Coyne
Assistant Director of Food and Beverage



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application : Ave Imports USA, LLC
Mark: : AVE
App. No. : 85691127
Filing Date : July 20, 2012

DECLARATION UNDER 37 C.F.R. § 2.20

1. The originally-submitted specimen, a copy of which is attached hereto as Exhibit A, was in use in commerce prior to the expiration of the filing date for filing a Statement of Use.

2. The specimen consists of point of sale materials that were provided to prospective purchasers of the identified goods (*e.g.*, distilled spirits) concurrent with the provision of such goods and an offer to sell by applicant.

3. For example, the specimen was used in commerce as point of sale materials concurrent with the provision of such goods and an offer to sell the identified goods to The Palmer House Hilton in Chicago, IL, on March 19, 2015, as evidenced by the letter of intent to purchase issued to applicant by Mr. Patrick Coyne, Assistant Director of Food and Beverage for The Palmer House, a true and accurate copy of which is attached as Exhibit B.

2. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and

that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth above are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Date: 6/20/2016

By: 
Name: Eduardo Cortez

Exhibit A



AVE

HAND CRAFTED TEQUILA

Ave Imports USA, LLC. All rights reserved

Exhibit B

PALMERHOUSE
A HILTON[®] HOTEL

March 16, 2016

Palmer House Hilton
17 E. Monroe Street
Chicago, IL 60603

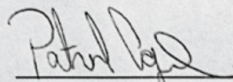
Ave Imports USA, LLC
7235 S. Ferdinand Avenue
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We look forward to further discussions and the possibility of doing business with Ave Tequila.

The Palmer House Hilton



Patrick Coyne
Assistant Director of Food and Beverage



AVE

HAND CRAFTED TEQUILA

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